

The Necessity for Reform to Newfoundland and Labrador's Housing Policies

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Abstract

This paper examines the potential of legislative and non-legislative reform to Newfoundland and Labrador's housing policies. In particular, attention is paid to legislative rental control, legislative tenancy protection programs and the necessity of providing subsidy programs to landlords and development groups to provide incentives for the private market to assist in developing affordable housing options.

Definition of a Policy Problem

Newfoundland and Labrador is struggling to cope with one of the most constrained rental markets in Canada. In 2009, St. John's experienced an apartment vacancy rate of 0.9%, a large decline from its 1999 level of 9.2% (CMHC 2009a: 6). The growing economy is spurring speculative acquisitions in real estate, further reducing the already limited supply of affordable housing throughout Newfoundland and Labrador. The amount of pressure exerted on the rental market as a result of the province's critically low vacancy rate and its record-level cost of rent is being felt by a growing number of moderate-to-low and fixed-income citizens in all parts of the province.

On the 19th of May, 1973, Canada ratified the International Covenant on Economic, Social and Cultural Rights, acknowledging "the right of everyone to an adequate standard of living...including adequate food, clothing and housing, and to the continuous improvement of living conditions." (Government of Newfoundland and Labrador, 2007: 7) The Canada Mortgage and Housing Corporation (CMHC) recognize housing to be sufficient if it meets three criteria: adequacy, suitability and affordability. Adequate housing is defined as, "housing [which] does not require any major repairs, according to residents." Housing is considered suitable if it has "enough bedrooms for the size and the make-up [of the household]," and finally, housing is considered affordable if it "costs less than 30% of before-tax household income" (CMHC, 2009b). As 2006 census data reveals, 4.8% of rental units in the province were deemed to be below the adequacy standard, 2.3% were below the suitability standard, and 30.9% were below the affordability standard. To put this into perspective, the national averages were 3.7%, 4.9% and 24.6%, respectively (CMHC, 2009c).

The government is making a conscientious effort to deal with the province's housing crisis, dedicating \$28 million of the 2009 budget towards Newfoundland and Labrador Housing infrastructure as well as putting money toward various social housing programs over the last number of years (Government of Newfoundland and Labrador, 2009). Undertaking fundamental reforms to any housing system is a slow and difficult process, as they are built upon a complicated web of relationships. These systems are further interlocked with other political and socioeconomic processes occurring over time. As a result, a new government will inherit these systems and relationships, having to carry on from where its predecessor left off (Peter King, 1998: 131).

While there are no immediate solutions to the critical shortage in housing that is being experienced throughout Newfoundland and Labrador, there are various policy alternatives which have proven effective in other markets. This paper will examine

several changes to the province's Residential Tenancies Act which would provide better support to the thousands of individuals who are experiencing the province-wide housing crisis first-hand. These policy changes have the potential to accommodate tenants and landlords alike, and over time, ultimately put the province in a better position to handle the impact that growing economic development has on the communities and their citizens.

Newfoundland and Labrador's legislative code is particularly thin in providing protection to low and fixed-income households. Unlike many other provinces which have implemented legislative protection to assist households who are struggling with a volatile rental market, Newfoundland and Labrador's legislation is ineffective at protecting tenants from predatory increases in rent or unjust evictions. Furthermore, there are few incentives for the private sector to provide affordable housing options which would remove some strains on government.

Ontario, British Columbia, Manitoba, Prince Edward Island and Quebec all have legislative rent controls (Global Property Guide, 2010), while the government of New Brunswick is also an influential figure in determining the province's regional costs of rent (Canadian Home Find, 2010). Additionally, New Brunswick, Nova Scotia, Ontario and Manitoba all have security of tenure legislation which prevents occupants from being evicted without just cause. While each of these provinces have implemented reforms which best suit their housing needs, many of the policies adopted elsewhere in Canada would be able to be successfully integrated into Newfoundland and Labrador's Residential Tenancies Act in order to provide better support for the large number of the population affected by such a lucrative rental market.

The province's rural communities present an additional complication for the Newfoundland and Labrador Housing Corporation. A growing proportion of the province's population consists of an ageing group of individuals who have resided in rural areas their entire lives. The younger generations are either forced to urbanize to nearby cities or else emigrate outside of the province in order to receive more substantive educational and employment opportunities which will allow them to remain competitive in an increasingly selective job market. Because the population remaining in these rural communities is rapidly ageing, many are forced to leave the only life style they have known and move to more urban areas in order to access the health care and social support they require.

Some of the issues plaguing the Newfoundland and Labrador Housing Corporation include long waitlists for social housing, a growing number of people who constitute the 'hidden homeless' (individuals who are not explicitly sleeping in the streets but who do not have access to their own, permanent, accommodations), as well as an insufficient level of affordable housing being constructed and maintained by the province. The rate at which new developments are being constructed is not enough to accommodate a fraction of the population affected by the housing crisis. As of January 2010, Newfoundland and Labrador Housing directly administered 5,511 rental units throughout the province. Of these 5,511 units, 3,192 are located in St. John's and surrounding areas on the northeast Avalon, 760 units are located in Corner Brook, and only 228 are located in all of Labrador (the remainder of the units are located in and around Gander, Grand Falls-Windsor, Marystown and Stephenville) (NL Housing, 2010: 5-8). While there are continuous developmental and maintenance plans for the province's

social housing, the rate at which they are occurring is not adequate as is demonstrated by a waitlist of over 1,420 individuals¹ (NL Housing, 2010: 9).

As affordable housing in the province becomes increasingly scarce, a growing number of individuals are at risk of falling into the category of 'hidden homeless' (those without permanent shelter, who may be between shelters or those who may be moving from couch-to-couch, temporarily residing with friends or relatives). In the province's capital for example, the number of homeless individuals rose from 305 in 2000 to 601 in 2003 and to 1,267 in 2007 (Government of Canada, 2009a: 2). The severe lack of affordable housing is forcing those who are in need of social assistance to enter, and attempt to compete, in a volatile housing market which simply cannot sustain them.

Those who are able to find a vacancy in the province are not free of obstacles either, as is the case with Sandra B., an individual who is living in government housing. While she may have located shelter for the time being, her residence is still inadequate in many ways. For example, when she does her laundry, she has to run a garden hose from her kitchen sink down to a washing machine in the basement (McLeod, *The Telegram*, 2010). One possible solution to problems such as these would be to provide some sort of incentive for the private sector to supply affordable housing options. Not only would this reduce the strain on the government's resources, but it would also make money available to improve existing social housing or construct new projects.

Individuals are also plagued by uncertainty as a result of the province's weak laws regulating unjust eviction. Unlike provinces like Nova Scotia, which offers residents legislative protection from unnecessary evictions provided they have been a tenant of the residence for at least five years (Government of Nova Scotia, gov.ns.ca, January 14, 2010), there are no regulations in Newfoundland and Labrador recognizing what constitutes a justifiable reason for eviction. As a result, long-term tenants are being evicted from their residences in order for landlords to capitalize on a strained rental market by raising the cost of rent and bringing in new tenants.

By implementing new policies such as rent control, tenancy protection, and landlord and developer subsidy programs, the government of Newfoundland and Labrador will be able to provide the much needed support their citizens require in order to survive in the constrained rental markets seen throughout the province. Ultimately, the success of these new policies can be measured on various levels; however the overall goal of any policy reform to the province's housing system should be a visible decline in the number of households in need of government support. Other factors which may be measured empirically in determining the success of the proposed policy implementations include an increased vacancy rate, stability in the average cost of rent over a period of time, as well as a decrease in the number of tenant-landlord disputes which tie up government resources that could be better spent elsewhere.

Background and Policy Context

The Canadian Mortgage and Housing Corporation places the capital city third lowest, behind the 0.6% rate found in both Quebec City and Regina, in a comparison of Canada's thirty five major cities' vacancy rates (CMHC, 2009a). While the vacancy rate in the province is at an all-time low, the cost of rent has never been more expensive (CMHC, 2009a). Coupled with a decline in available housing, 2009 saw a significant increase in rental prices. Throughout the province, the average cost of a Bachelor unit

increased 6.2% to \$541 per month, 5.7% for a one-bedroom apartment to \$592 per month, 4.9% for a two-bedroom apartment to \$677 per month and 5.4% for a three-bedroom apartment to \$714 per month. (CMHC, 2009a).

Recall that national housing standards in Canada are evaluated on three levels: adequacy, suitability and affordability. In the government of Newfoundland and Labrador's *Social Housing Plan*, a household is defined as having a 'core housing need' if it either: requires major repairs, is not of suitable size, or if it cannot be accessed without spending over 30% of gross household income (Government of Newfoundland, www.nlhc.nl.ca, January 25, 2010). It is interesting to note that in various social-minded countries, 4 to 5% of gross household income was deemed appropriate to spend towards housing (McGuire, 1981: 63). The price of rent was simply expected to cover operating costs while in market economies like Canada, rent is set at a level which is expected to cover the operating costs, as well as provide a rate of return for the landlord (McGuire, 1981: 63).

Newfoundland and Labrador's rental market is inherently problematic because as the economy grows, the cost of rent rises faster than the rate of inflation (Chandra Pasma, 2010). The problem lies in the tendency of some landlords to increase rent beyond reasonable levels in order to bring in a high return on their investments. Of course, this particular strategy should not come as a surprise as it is natural for landlords to seek a profitable return on their investments. The lack of legislative regulation in the province's housing system provides landlords with the breathing room necessary to capitalize on the low vacancy rate and charge particularly high levels of rent because they know there are few other options available.

In an international comparison of housing policies, France, Sweden and the Netherlands all allow some form of a rental cap in their housing markets. While examples can be drawn from all over the world, the most unrestricted housing systems exist in countries with a liberal welfare state – the United States, Australia, Switzerland, Belgium, and since 1988, Great Britain (John Doling, 1997). Conversely, the most restricted housing systems exist in social democratic countries such as Sweden, and to a lesser extent, Denmark, where the overall standard of living is typically higher (Doling, 1997: 199).

Every society confronts housing issues differently because of the various socioeconomic factors which act upon the market. Yet, to see effective policies in action, one need only to look throughout Canada and examine what other provinces have legislated in an effort to bring order to their own housing markets. Newfoundland and Labrador is developing one of the most volatile and unrestricted housing systems in all of Canada. The province's legislation is also remarkably thin when it comes to providing support to tenants. While Newfoundland and Labrador has some protective legislation, it is far removed from the policies in place elsewhere in the country. While a landlord may only increase their rent once in a twelve-month period, there are no rules as to the degree to which the rent may be raised. Likewise, while the province requires that a landlord provide a tenant with adequate notice prior to being evicted, there are no rulings in place which determine what constitutes an unnecessary eviction, with the exception that a landlord may not give notice of eviction in the event of a tenant complaining of the quality of housing (Government of Newfoundland, 2010).

Throughout the province, some landlords are taking advantage of the relatively thin protection provided in the Residential Tenancies Act to evict long-term, reliable tenants, in order to capitalize on the low levels of available housing. This is achieved by raising the cost of rent and then putting the property back on the market, and is particularly effective when the demand for affordable housing is at the level we see today. Remember that Ontario, Manitoba, British Columbia, Prince Edward Island, Quebec, Nova Scotia and New Brunswick all have some form of legislative protection which either regulates annual increases in rent, or else provides tenants with protection from unjust eviction. Newfoundland and Labrador is quickly becoming an outlier in regulatory housing policy and as a result, its citizens are bearing the consequences.

Rent control across the country has been implemented with a similar structure. Generally, rent is allowed to be increased in proportion to the level of inflation over a given year. In addition to this, a further increase is permitted in order to account for rising operating costs and property value, as well as repairs or renovations made to the dwelling. In Quebec for example, landlords are able to increase their rent up to 1.1% annually, plus an additional 0.7% for each 5% increase they receive on their property value (Government of Quebec, www.rdl.gouv.qc.ca, February 13, 2010). Similarly, British Columbia allows for an annual increase of rent equal to the inflation rate, plus an additional 2% (Government of British Columbia, www.rto.gov.bc.ca, February 13, 2010). Furthermore, there is an interesting form of rent control in place in Ontario which allows landlords to apply for a rental increase that is higher than the allotted percentage. Provided they present their rationale for the increase to a designated body which reviews the requests on a case-by-case basis (Government of Ontario, www.ltb.gov.on.ca, February 13, 2010).

Likewise, many provinces implement tenant protection policies which prevent unnecessary eviction. This is best observed in Nova Scotia and New Brunswick, where after an individual has been in a tenancy agreement for five years or more, they are granted tenure. This means that landlords may not give notice to end tenancy unless the premises have been made “uninhabitable by flood, fire or other similar occurrences” (Government of Nova Scotia, www.gov.ns.ca, January 14, 2010). Ontario builds upon their housing legislation by granting tenants a 'right of first refusal' (Wendy Stueck, *The Globe and Mail*, August 9, 2008), meaning that a tenant who receives notice of termination of a tenancy for the purpose of repairs or renovations has first priority in returning to the residence at the earliest opportunity, with a rent that would have been lawfully charged had there not been an interruption in the individual's tenancy (Government of Ontario, www.ltb.gov.ca, February 13, 2010).

From a social perspective, it can be argued that in a country such as Canada, a government has a moral obligation to aid its citizens in securing an adequate standard of living. Support for this argument is evident by Canada's ratification of the 1973 International Covenant on Economic, Social and Cultural Rights. We reside in a society which considers health care to be a universal right which must not be defined by market forces, yet we allow thousands of individuals to remain homeless because housing policies are not categorized under the same principle. Growing waitlists for social housing, along with the inadequacy of existing policies necessitate a change in policy. Additionally, an extremely low vacancy rate, along with rising costs of rent, are putting affordable housing out of the reach of an increasing number of people in our province.

From an economic perspective, as Prime Minister Gordon Brown demonstrated in the United Kingdom, a supportive social housing regime can provide the socio-economic support necessary to alleviate certain strains on the economy (The Guardian, 2009). The province's economic growth is fuelling speculative real estate acquisitions, creating additional tension on an already near-zero vacancy rate. It is no secret that the actions being taken by the government are nowhere near adequate to deal with these constraints on the province's housing system, as is evident from the over 1,400 names on the waitlist for social housing. It is therefore their moral duty as government to offset this imbalance. Over time, the situation will continue to deteriorate and eventually will become unsustainable in the long-term.

Policy Alternatives

It is of critical importance that policy makers recognize the necessity of allowing the legislation to evolve in a way which meets the growth of the economy. While the government is diverting millions of dollars into the housing market through various development projects and social assistance programs, there has yet to be a decrease in the number of households applying for government support. Additionally, the cost of rent has shown no sign of stability; increasing disproportionately to the rate of inflation over the last decade. As one may conclude by examining various Residential Tenancies Acts across the country, Newfoundland and Labrador has fallen behind the status quo in providing legislative protection to the thousands of individuals affected by the province-wide housing crisis. While there are a wide variety of strategies which could be implemented and adjusted to the needs of our province, this paper proposes three alternatives to our current housing policy. These policies will ultimately reduce the pressure exerted on the government's social programs, freeing up resources which can be diverted to other sectors of the economy.

The first and most controversial, is legislative rent control; preferably influenced by the systems currently in place in areas like Ontario. Rent control is one of the oldest deliberately implemented instruments in regulating housing costs in America and Western Europe (Doling, 1997: 193). Theoretically, the cost of rent is set at a price which covers operating costs, property tax, depreciation in property value, and any amortization in the cost of capital, while still providing a reasonable return on the equity of capital invested (McGuire, 1981; 62). However this is not always the case. While it is anticipated that property owners will seek a reasonable return on their investments, a case-by-case evaluation of what exactly constitutes a reasonable increase yields varying results. It is for this reason that the Ontario rent control system is ideal. As we have already noted, Ontario allows one increase in rent per twelve-month period. The allowable increase in rent is set at a level which accounts for inflation plus an additional 3% used to cover miscellaneous expenses. Ontario has also legislated a separate clause in their Residential Tenancies Act which allows landlords to apply for an increase in rent exceeding the applicable guideline if the landlord may demonstrate eligible capital expenditures, an extraordinary increase in the cost of municipal taxes or utilities, as well as if there are any operating costs related to any security services provided (Government of Ontario, www.ltb.gov.ca, February 13, 2010).

A second policy alternative is legislative tenancy protection. While the models in place in Nova Scotia and New Brunswick are ideal in the sense that provide the best

protection to reliable tenants, even changes to our legislation that are as basic as outlining exactly what constitutes an unacceptable eviction would be a step in the right direction. Protective tenancy legislation will ultimately reduce the number of evictions in the province, and therefore reduce the number of households seeking a rental property. With less individuals competing for a limited amount of rental units, the overall strain on the province's housing markets will be greatly diminished, easing the burden put on social programs in accommodating such a large number of people.

A final policy alternative, and one which requires no changes to existing legislation, is to provide subsidies to landlords and development groups in order to provide and maintain a high standard of affordable housing. The possibility for new subsidies are endless and range from providing landlords with money to put towards eco-friendly renovations, to providing incentives for future development projects to allocate a small percentage of construction to affordable housing. The success of such practices will significantly reduce the burden on the government in supplying and maintaining affordable housing options. The money saved could even be recycled into various subsidy programs, or form of a housing trust fund to ensure the availability of finances.

Evaluation of Policy Alternatives

While the arguments for and against rent control are extensive, case studies throughout the world highlight the proven effectiveness of such Keynesian policies. To reduce the impact of rampant development, New York City has implemented rent controls continuously since the end of the Second World War (Doling, 1997: 196). Overall, rent controls reduce the ability of private ownership to gauge a disproportionate profit from manipulating the cost of rent. In order to prevent a backlash from private ownership groups, rent control policies must be implemented in conjunction with sufficient subsidy programs in order to counter-balance any extensive decline in investment returns, a topic which shall be further developed below.

In order to be effective, a rental cap cannot be set at an arbitrary level. Also, rent cannot simply be set at a proportion which balances the rising cost of inflation. In order to effectively carry out a rent control program, the government will need to draw on models from other provinces and include a proportion of allowable rental increases which will be able to provide landlords with enough of a financial return to carry out required maintenance and operating costs (again, this highlights the importance of a system modeled after Ontario's current policies.) It will undoubtedly take some trial and error before it can be adequately predicted what will constitute an acceptable proportional increase in rent. During this trial process, it is important for the government to become actively engaged in focus groups consisting of both tenants and landlords in order to determine whether the allowable rent increases are effective or if they are inadequate. Such an extensive reform program cannot be done unilaterally by the government. Without the cooperation of tenants and landlords alike, the social situation could rapidly deteriorate, threatening the legitimacy of any future housing program.

It is also important to acknowledge that rent control programs are not necessarily permanent solutions, nor are they a quick-fix alternative to existing policies. Rather, rent control policies could be implemented for a predetermined amount of time then followed by a thorough program review, or until vacancy rates and cost of rent reach an acceptable

level of stability in markets throughout the province. Policies such as these have been used in areas throughout the United States with much success. One particular example is California during the 1960s-80s. During this time frame, the Santa Monica region experienced enormous development, and much like we are seeing in our province today, the results were a reduced vacancy rate and rapidly increasing costs of rent (William Tucker, 1990: 154). While the results in California, as well as in other areas with rent control were stagnant regional development, the social situation was improved without deterring a significant amount of investment.

An additional policy alternative is stronger security of tenure legislation, which can again be seen in more socially-minded provinces like Nova Scotia (Nova Scotia, 2010). Tenant security is of particular importance as it will aid in reducing the number of individuals competing for a limited supply of rental units. There are multiple ways in which the province's legislation could be reformed to provide better protection to tenants, and various models which have already proven effective are in place in Nova Scotia, New Brunswick and Ontario. Implementing a system which will provide tenure-based protection to reliable tenants will provide incentives for renters to cooperate with their landlords in order to remain in their tenancy agreement for as long as both parties find it to be desirable. A system such as this, coupled with a right of first refusal as is in place in Ontario, will go a long way in preventing unnecessary evictions and will act as an incentive for tenants and landlords alike to cooperate. It is certainly necessary for landlords to retain the right to quickly evict troublesome tenants, however legislative tenancy protection will significantly reduce the number of complaints concerning unlawful evictions and will reduce competition within the housing market among those in need of social support.

It is vital to the success of the two policy alternatives mentioned above that the government provide incentives to landlords and developers to supply affordable housing options in order to reduce the strain placed on government resources. These subsidy programs could take various forms such as tax credits, incentives to provide eco-friendly renovations or even a rebate program to offset the cost of maintenance. Landlords will present a strong opposition to rent controls on the basis that it will significantly impede the return on their hard work and investments. However if there are subsidies in place to offset this imbalance, our province will see a larger involvement on behalf of the private sector in supplying quality affordable housing.

Future developmental groups could potentially enter into contractual agreements with the government in order to receive appropriate subsidies in proportion to the amount of affordable housing which is being created. Eventually, this will significantly reduce the waitlist for individuals seeking social assistance from governmental programs. With a Newfoundland and Labrador Housing waitlist in excess of 1,420 names, the benefits that this will bring to our province's social system are enormous (NL Housing, 2009). Removing such strains on governmental housing programs will free up invaluable resources and the money saved could be used to further other programs such as landlord-developer subsidy programs.

Recommendations and Implementation Considerations

Historically, rent controls have led to a decrease in the development of new housing, which would be devastating to the province. This highlights the importance of

providing subsidies to the private sector in coordination with rent control and security of tenure legislation. Diverting a portion of the establishment of affordable housing options to the private sector is beneficial to all parties and will allow the government to focus a greater portion of its resources to other areas of the economy which also require attention.

The province's housing crisis is affecting individuals of all ages and backgrounds throughout Newfoundland and Labrador. The current model of housing policies is insufficient and inherently unsustainable over the long run due to the province's rapid economic growth. However, there exists a multitude of policy options which can be implemented to remedy the situation and to find examples, one needs to look no further than to other Canadian provinces to see successful legislative action. Housing policy consists of a complex web of political, social and economic forces acting upon each other in various ways depending on the predicament of a particular market. As a result, there is no 'best option', rather, there are various pathways which could be followed by adapting existing policies that have proven to be effective elsewhere to the needs of Newfoundland and Labrador.

Rent control as a policy alternative will undoubtedly face the most opposition from development groups and landlords who fear a reduced financial return. However, this is a legitimate concern it is crucial to avoid the irony of forcing others into a reduced level of income in order to aid those who are already experiencing one. It is therefore essential to implement various government subsidies and incentive programs to offset this imbalance. While legislative reform has proven itself to be a slow process, it is necessary for the government of Newfoundland and Labrador to acknowledge the gap between the policies in place in the province and those in place in other Canadian provinces which provide legislative tenancy protection to those who require it.

The critically low vacancy rate and record-level cost of rent will continue to leave thousands of people without housing which is adequate, suitable, and most of all, affordable. Particularly in our province's current state of economic development, there has never been a better time to implement a policy reform than now. While legislative rent control and additional tenancy protection will significantly aid the province in reducing the number of individuals in need of social assistance, subsidy programs are vital to garner the support of developers and landlords, and are necessary to reduce the burden placed on existing government programs.

As the government of Newfoundland and Labrador continues to take reactionary measures to ease the housing crisis, it is failing to develop preventative policies which would ensure a socially sustainable housing system for the years to come. The Canadian government recognizes housing to be a fundamental right which every individual is entitled to. Meanwhile, the provincial government needs to become more proactive in their efforts to bring the affordable housing market under control. Ultimately, it is the duty of the provincial government to ensure that every Newfoundlander and Labradorian has the ability to access accommodations which are adequate, suitable and above all, affordable.

ⁱ At the time of writing, the Newfoundland and Labrador Housing Corporation's waitlist was in excess of 1,420 names. As of July 20, 2010, this number has decreased to 1,084 individuals however, this is still an increase from the 2007 level of 951 individuals and the waitlist is in a continuous state of fluctuation. (Len Simms, 2010).

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